IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 7, 2004 Session

ORLANDO F. SEGNERI ET AL., v. VERA M. MILLER ET AL.

Appeal from the Chancery Court for Sumner County
No. 2002C-162 Tom E. Gray, Chancellor

No. M2003-01014-COA-R3-CV - Filed October 19, 2004

This appeal involves a dispute concerning a lease purchase agreement. Tenants filed a complaint for declaratory judgment, seeking a declaration that they had a right to purchase the property at the price established in a separate sales agreement and, alternatively, that they were entitled to reimbursement for $50,000 worth of improvements they made to the residence while they rented it. The trial court found that the sales contract had expired and ordered Tenants to vacate the property. The trial court further ordered Landlords to reimburse Tenants for over $45,000 in improvements. Both parties appeal the amount of the reimbursement. Because we find no basis under the lease to either require the Landlords to reimburse Tenants for their improvements or to deny Landlords an award of attorney's fees, we reverse the judgment in part.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Reversed in Part, and Remanded

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Keith C. Dennen, Natalya L. Rose, Nashville, Tennessee, for the appellants, Vera M. Miller and Constance A. Miller.

Michael W. Edwards, Hendersonville, Tennessee, for the appellees, Orlando F. Segneri and Cynthia Segneri.

OPINION

In September of 1994, Orlando Segneri[1] entered into a sales contract with Constance and Vera Miller[2] to purchase the Millers' Hendersonville residence located at 103 Stoneybrook Lane for $179,000. A simultaneously executed Lease Purchase Agreement incorporated by reference the sales contract. The lease provided for Mr. Segneri to lease the house for twelve months. Initially the Segneris paid $1315 per month in rent. Mr. Segneri did not complete the purchase within the time set out in the contract, and on October 11, 1995, the parties signed an Addendum to the sales contract extending the closing deadline until February 1, 1996. The Addendum permitted the Segneris to continue renting but now on a month to month basis. Specifically, the addendum provided that:

> 1. Closing date is extended to 2/1/96;
> 2. Century 21 Duke Realtors to retain $1,100 as earnest money on contract extension;
> 3. $1,100 earnest money to be forfeit in the event sale does not close by 2/1/96;
> 4. Buyer and Seller agree to place home back on the market with Century 21 Duke Realtors if sale not completed by 2/1/96;
> 5. Buyer agrees to allow home to be shown with a lockbox attached if not closed by 2/1/96;
> 6. Buyer agrees to vacate property not later than 10 days prior to closing date for new Buyer;
> 7. Seller and Buyer agree to Buyer renting on a month to month agreement after 2/1/96;
> 8. Buyer agrees to release $8,000 of earnest money to seller immediately.

Once again, Mr. Segneri failed to close and as a consequence forfeited $9,100 in earnest money. When it became apparent that the sale was not going to happen by the spring of 1996, the Millers wrote the Segneris two letters discussing both rent increases and the anticipated sale of the house. In the April 4, 1996 letter, Connie Miller wrote:

> Thank you for the 2 increases in rent. . . . It would take $1755[3] to cover the interest we pay every month on the equity mortgage we took out. . . .

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[1]Although Cynthia Segneri, Mr. Segneri's wife, signed neither the sales contract nor the lease-purchase agreement, she is a named plaintiff in the declaratory judgment action.

[2]Constance Miller is the adult daughter of Vera Miller who was eighty years old at the time of trial. In 1998, Constance quitclaimed her interest in the home. However, Constance Miller is a named defendant in the action.

[3]The rent was increased twice during the spring of 1996, following the failure of the house to close by the extension deadline in the Addendum. The rent was raised to $1450 in March 1996 and again to $1755 in May 1996 by oral agreement between the parties. According to Vera Miller's testimony at trial, she moved to Georgia in 1994 in order to help another grown daughter and grandchild following a divorce. As a result of the Stoneybrook house not closing, she was forced to borrow additional monies to purchase a home in Georgia. Mrs. Miller explained that she had to scale back due to the problems associated with the sale of the Hendersonville house. The letters written to the Segneris detailed the Millers' financial strains and the need for the rent increases.

> Since we don't want you to go through what we did, we want to give you as much time as you need to arrange financing you can be comfortable with. And, if we could be comfortable in the meantime, we'd be satisfied leasing indefinitely. We consider it your house, even though technically we might own it.

The following month, Vera Miller wrote the Segneris in a letter dated May 7, 1996:

> We never doubted your sincerity to purchase our house. . . . As Connie wrote we want you to be able to get in a position to buy without a deadline. There is no rush on our part now. . . . We are sorry you had the problem with your house in Ohio.[4]

Around this time, the Segneris began to make substantial improvements to the house beginning mid-April 1996.[5] The Segneris documented costs of the following improvements:

Appliances (costs and repairs):	$3,638.51
Door Repair:	$ 570.48
Heating and Air-conditioning Unit:	$6,208.00
Kitchen Cabinets and Sink:	$7,252.64
Deck (materials and installation):	$6,900.00
Repairs to Floor Joists (*i.e.*, crawl space support):	$5,600.00
Front Door:	$1,067.39
Storm Door:	$ 285.53
Ceiling Fan:	$ 120.87
Electrical Fixtures:	$ 286.19
Curtains and Rods:	$ 474.68
Wallpaper:	$ 978.00
Miscellaneous Repairs:	$ 443.00
Window Replacement:	$1,582.00
Painting:	$3,675.00
Chimney Repair and Cleaning:	$ 990.00
Replacement of Exterior Wood (Sonny Wright):	$1,562.09
Landscaping:	$7,017.90
Water Service Line Replacement:	$ 737.38
Plumbing Repair:	$ 275.00
Replacement of Garage Door Opener and Repairs to Door:	$ 833.83

[4]Initially, the Millers believed the Segneris' inability to close stemmed from problems selling their home in Ohio. At trial, the Millers learned for the first time that the Segneris sold their Ohio home on October 23, 1995. Mr. Segneri admitted that he never advised the Millers of the sale. He further testified that he received no equity distribution from the sale.

[5]At trial, the Segneris documented that 97% of the improvements were undertaken after mid April 1996.

Carpet Replacement and Cleaning:	$ 767.23
TOTAL:	**$51,266.51**

After renting for over eight years,[6] the Segneris notified the Millers in early December 2001 that they were finally in a position to purchase the property. The Millers responded in their Christmas card to the Segneris: "We look forward to talking to you about the house. Hopefully, we can work it out. We never doubted you wanted it. So give us a call at your convenience." The negotiations that followed did not go well.

The Millers offered to sell the house for $251,000. Mr. Segneri testified that he recognized that the Millers were entitled to some appreciation, so he started with $230,000 and then subtracted a portion of his improvements to arrive at his counter-offer of $195,000. In April 2002, Connie Miller told Cynthia Segneri during a telephone conversation they were declining the $195,000 offer and explained that they would not credit the Segneris for either the improvements or maintenance done. The Segneris next offered to purchase the property for $185,000. Once again, the Millers declined the offer.

Following several unsuccessful rounds of discussions, the Segneris then notified the Millers through their attorney that they would sue if the Millers did not agree to sell for the original purchase price of $175,000. In addition, the Segneris demanded reimbursement for over $50,000 in improvements made on the property. The Millers answered through their attorney by a letter dated May 8, 2002, notifying the Segneris that in accordance with the Addendum, the Millers were terminating the lease effective June 30, 2002, and denying that the Segneris were entitled to reimbursement with respect to the improvements.

On May 31, 2002, the Segneris filed a declaratory judgment action in the trial court,[7] seeking a declaration of their right to purchase the property and reimbursement of the cost of the improvements they made.

Following the bench trial, the court found that the Segneris had no legal right to purchase the house for the original contract price of $179,000 and that the Millers could retake possession of the house and list the property prior to the order becoming final.[8] The court further held that the Segneris

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[6]The Millers and the Segneris never met face to face, nor did the Millers ever visit the Stoneybrook home while the Segneris lived there.

[7]This action was removed to United States District Court for the Middle District of Tennessee on July 5, 2002, but then remanded to state court on November 4, 2002. The Millers moved to supplement the record on appeal to include their answer and counter-claim filed in federal court. We denied without prejudice the motion and referred the Millers to Tenn. R. App. P. 24(e) which states that the content of the record lies within the exclusive domain of the trial court.

[8]The Segneris have not appealed the trial court's ruling that:

(continued...)

were entitled to reimbursement of $43,775 for improvements made to the house and placed a lien against the property in the amount of the judgment plus any post-judgment interest due and declined to award attorney's fees to the Millers:

> So the Court is of the opinion that the plaintiff is entitled to a judgment for certain expenditures that he has made in improving the property and enhancing the value of the property that should have been the duty and obligation of the seller. Specifically, the Court finds that the heating and air conditioning unit should be paid for by the seller. The Court further finds that there was certain other expenditures, such as the front door, the storm door, the painting of the exterior, the tuck pointing and chimney repair, water service line replacement, the hot water heaters, the landscaping, crawl space support that should be reimbursed to him.
>
> The Court further finds that because the sellers had indicated to the buyer, tenant of the home, their intent to sell to him and didn't intend to -- didn't take any action to enforce the contract after February 1, 1996, but in April and May indicated such willingness to give him an indefinite period of time, that the seller should reimburse for the kitchen cabinets, the built-in appliances, the deck.

The Millers appeal, contending that the trial court erred in awarding the Segneris any money at all for improvements and in failing to award them attorney's fees. On the other side, the Segneris argue that the trial court erred in not awarding them the full amount of their improvement expenses.

I. STANDARD OF REVIEW

The standard of review on appeal is well-settled. We review the trial court's findings *de novo,* with a presumption of the correctness of the factual findings of the trial court, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). No such presumption of correctness attaches to the trial court's conclusions of law. *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

The issues raised herein involve interpretation of written agreements, and the question of interpretation of a contract is a question of law. *Guiliano v. CLEO, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). Therefore, the trial court's interpretation of a contractual document is not entitled to a presumption of correctness on appeal. *Id.*; *Angus v. Western Heritage Ins. Co.*, 48 S.W.3d 728, 730 (Tenn. Ct. App. 2000). This court must review the documents ourselves and make our own

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[8](...continued)
The buyer does not have a contract to purchase the improved real property at 103 Stonybrook Way in Hendersonville, Sumner County, Tennessee for $179,000. The buyer is actually on a month-to-month rental agreement, and the Court has taken a look at that lease/purchase agreement but he is on –it's a month-to-month rental.

determination regarding their meaning and legal import. *Hillsboro Plaza Enters. v. Moon*, 860 S.W.2d 45, 47 (Tenn. Ct. App. 1993). Our review is governed by well-settled principles.

"The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern." *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002). The purpose of interpreting a written contract is to ascertain and give effect to the contracting parties' intentions, and where the parties have reduced their agreement to writing, their intentions are reflected in the contract itself. *Id.*; *Frizzell Constr. Co. v. Gatlinburg, L.L.C.*, 9 S.W.3d 79, 85 (Tenn. 1999). "The intent of the parties is presumed to be that specifically expressed in the body of the contract . . . ." *Planters Gin Co.*, 78 S.W.3d at 890. Therefore, the court's role in resolving disputes regarding the interpretation of a contract is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the language used. *Guiliano*, 995 S.W.2d at 95; *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth Inc*., 521 S.W.2d 578, 580 (Tenn. 1975).

Where the language of the contract is clear and unambiguous, its literal meaning controls the outcome of contract disputes; but, where a contractual provision is ambiguous, *i.e*., susceptible to more than one reasonable interpretation, the parties' intent cannot be determined by a literal interpretation of the language. *Planters Gin Co.*, 78 S.W.3d at 890. In that situation, courts must resort to other rules of construction, and only if ambiguity remains after application of the pertinent rules does the legal meaning of the contract become a question of fact. *Id.* However, a strained construction may not be placed on the language used by the parties to find or create ambiguity where none exists. *Id.* at 891.

II. THE IMPROVEMENTS

The Segneris insist the trial court did not go far enough in ordering the Millers to reimburse them for $43, 775.92 worth of improvements. In contrast, the Millers argue that the trial court erred by ordering them to reimburse the Segneris for any of the improvements since recovery was barred by the express provisions of the Lease Agreement agreement which provided in pertinent part that:

> 4. Care of Premises. Lessee will, at his own expense, keep and maintain the premises, including improvements, in good repair and tenantable condition during the term of this Lease, or any renewal or extension hereof. Lessee may paint, wallpaper, replace window coverings and other improvements as required.
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> ****
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> 11. Surrender. At the expiration of this Lease or any renewal thereof, **Lessee will vacate and surrender the premises in as good state and condition as they were in when entered into, together with all permanent alterations and permanent additions made by** Lessee during the term, reasonable wear and tear excepted.

(Emphasis added).

The trial court found:

> The buyer, plaintiff has presented to the Court certain claims that he should be reimbursed because he had made certain improvements to the property which went beyond just maintaining the demise [sic] premises. The Court finds that lessee did not agree to make improvements which would enhance the property's value, and the Court finds that is what the plaintiff has done. He had expended monies that has increased the value of the improved real property. . . .
>
> . . . . [T]he Seller should reimburse the buyer or the plaintiff for $43,775.92. That includes the heating and air conditioning at $6,208; kitchen cabinets at $10,200; built-in appliances at $2,600; the deck at $6,900; the crawl space support at $5,500; the front door at $1,067.39; storm door, $285.53; the painting of the exterior and the lower deck scraped and painted, $2,875; the tuck pointing and chimney repair, $900; landscaping $5,500; the water service line replacement, $750; and hot water heaters, $890.

Although the trial court referenced the lease in its decision, the court appears to have permitted recovery on an equitable theory of unjust enrichment or *quantum meruit.* Specifically, the trial court agreed with the Segneris that the improvements made on the home greatly enhanced its value and that the Millers should not profit from the extensive improvements made by the Segneris who had assumed they would eventually purchase the home.[9]

The Millers argue that trial court erred by looking beyond the express language of the lease and basing recovery on *quantum meruit* or a related theory. "A *quantum meruit* action is an equitable substitute for a contract claim pursuant to which a party may recover the reasonable value of goods and services provided to another" under certain circumstances. *Swafford v. Harris*, 967 S.W.2d 319, 324 (Tenn.1998). The elements that must be proved to establish a claim in the theory of *quantum meruit* include the nonexistence of an enforceable contract, the provision and receipt of valuable goods and services, and circumstances that demonstrate that it would be unjust for the party benefitting from the goods or services to retain them without paying for them. *Castelli v. Lien*, 910 S.W.2d 420, 427 (Tenn. Ct. App. 1995). In addition, however, "the circumstances must indicate that the parties involved in the transaction should have reasonably understood that the person providing the goods or services expected to be compensated." *Id.*, citing *V.L. Nicholson Co. v. Transcon Inv. & Fin. Ltd.*, 595 S.W.2d 474, 482 (Tenn. 1980). Absent proof that the person providing the benefit expected compensation, a claim for *quantum meruit* must fail. *Estate of Queener v. Helton*, 119 S.W.3d 682, 688 (Tenn. Ct. App. 2003); *Estate of Atkinson v. Allied Fence & Improvement Co., Inc.*, 746 S.W.2d 709, 711 (Tenn. Ct. App. 1988).

[9]The Segneris moved this court to consider as a post-judgment fact regarding the purchase price the Millers received for the Stoneybrook property on September 2, 2003. We denied the motion pursuant to Tenn. R. App. P. 14.

The Segneris concede in their brief that "a contract cannot be implied, however, where a valid contract exists on the subject matter." (Citing *Taille v. Chedester*, 600 S.W.3d 732 (Tenn. Ct. App. 1980)). However, the Segneris insist that the lease agreement did not cover the subject of compensation for improvements surrendered under Paragraph 11 of the lease and, therefore , the trial court was free to fashion an equitable remedy. We disagree.

In Tennessee, the general rule is that a tenant who voluntarily makes improvements on leased property is not entitled to reimbursement absent an express provision for reimbursement. *Parsons v. Hall*, 184 Tenn. 363, 371, 199 S.W.2d 99, 102 (1947); *Jaffe v. Bolton*, 817 S.W.2d 19, 23 (Tenn. Ct. App. 1991). Here, paragraph 11 of the lease is captioned "Surrender" and clearly states that the "Lessee will vacate and surrender the premises in as good state and condition as they were in when entered into, together with all permanent alterations and permanent additions." In addition, Paragraph 4 provides that the "Lessee will, at his own expense, keep and maintain the premises, including improvements." There was no express provision that the lessors would reimburse for improvements.

This court was recently faced with a tenant seeking to recover the value of extensive improvements and alterations made to a restaurant. *Durnelco, Inc. v. Double James, L.L.C.*, No. E2001-02010-COA-R3-CV, 2002 WL 1379571 (Tenn. Ct. App. June 26, 2002) (no Tenn. R. App. P. 11 application filed). Like the instant case, a provision in the lease provided that any alterations and modifications to the property made by the tenants would become property of the lessors. We held that because a lease existed in *Durnelco* which covered the subject matter of alternations and improvements, the tenant could not recover under an unjust enrichment theory because a contract existed between the parties. *See also Jones v. Dorrough*, E2001-02397-COA-R3-CV, 2002 WL 31414098 (Tenn. Ct. App. Oct. 28, 2002) (perm. to appeal denied March 10, 2003) (holding lessee not entitled to recovery value of improvements if lease states that improvements surrendered to lessor).

Accordingly, we reverse the trial court's reimbursement award to the Segneris since the lease clearly provided that all improvements are surrendered to the lessor, *i.e.*, the Millers.[10]

III. ATTORNEY'S FEES

The Millers argue that the trial court erred in not awarding them attorney's fees as provided in the lease purchase agreement:

> 19. Attorney's Fees. If it becomes necessary for the Lessor to employ an attorney to enforce or defend any rights or remedies hereunder, the Lessee shall pay all costs incurred therefor or in connection therewith, including but not limited to reasonable attorney's fees.

[10]Because we find the Segneris are not entitled to reimbursements under the express terms of the lease, we need not address their issue that the trial court failed award them the complete amount.

Tennessee follows the American Rule requiring litigants to pay their own attorney's fees in the absence of a statute or contractual provision otherwise. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000) (citing *John Kohl & Co. v. Dearborn & Ewing*, 977 S.W.2d 528, 534 (Tenn. 1998)). Unless a statutory or contractual fee-shifting provision applies, such fees are not recoverable. *Morrow v. Bobbitt*, 943 S.W.2d 384, 392 (Tenn. Ct. App. 1996); *Pinney v. Tarpley*, 686 S.W.2d 574, 581 (Tenn. Ct. App. 1984).

Courts may enforce provisions in contracts that expressly allow a prevailing party, or otherwise described party, to recover its attorney fees incurred in disputes over the contract. *Pullman Standard, Inc. v. Abex Corp.*, 693 S.W.2d 336, 338 (Tenn. 1985); *Pinney*, 686 S.W.2d at 581. The award of fees, however, is limited to the situation agreed to by the parties as set out in the language of the lease provision. Such provisions are subject to the usual rules of contract interpretation. The language of the fee provision determines whether fees can be awarded under the facts present. *See Pullman Standard*, 693 S.W.2d at 338 (holding that fees are recoverable under an express indemnity contract if the language is broad enough to cover such expenses).

We review this question *de novo* with no presumption of correctness since the interpretation of the lease with respect to attorney's fees is a question of law. *Guiliano* , 995 S.W.2d at 95; *Angus* 48 S.W.3d at 730. Here, the lease agreement provided for reimbursement of attorney's fees incurred by the Lessor " to enforce or defend any rights and remedies." The sole question at trial and here, then, is whether the Millers' fees incurred in defending against the Segneris' declaratory judgment action was covered by the parties' lease agreement.

The Segneris brought a declaratory action seeking a declaration that they had a right to purchase the house at the original price and, alternatively, that they were entitled to reimbursement for over $50,000 worth of improvements made to the property. The Millers defended on the basis that the sales contract had long since expired, that the Segneris were merely renting on a month to month basis as provided in the addendum to the lease agreement, and that any and all improvements made were to be surrendered under paragraph 11 of the lease provision. Because the Segneris would not vacate the premises, the Millers further sought to have to Segneris removed from the house so they could place the home on the market.

Clearly the attorney's fees incurred by the Millers to defend against the Segneris' demand for reimbursement for improvements was predicated on the Surrender provision of paragraph 11 of the lease. Accordingly, we reverse the decision of the trial court in denying the Millers' request for attorney's fees with regard to the issue of improvements. In addition, any fees incurred by the Millers in obtaining a court order requiring the Segneris to vacate the premises are also covered by the lease's fee provision. However, we affirm the trial court's denial of attorney's fees incurred by the Millers regarding the expired sales contract issue since no contractual basis existed for such an award. The case is remanded to the trial court for the calculation of attorney's fees.

CONCLUSION

We find the Millers owe the Segneris nothing for all the improvements they voluntarily made. In addition, we find the Segneris are responsible for paying the Millers' attorney's fees associated with the enforcement and defense of the lease agreement. Costs of this appeal are taxed to the appellees, Orlando Segneri and Cynthia Segneri.

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PATRICIA J. COTTRELL, JUDGE